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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/705,337	11/10/2003	Garry Tsaar		5125

29745 7590 08/23/2004

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EXAMINER

WALCZAK, DAVID J

ART UNIT PAPER NUMBER

3751

DATE MAILED: 08/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/705,337	Applicant(s) TSAUR, GARRY	
	Examiner David J. Walczak	Art Unit 3751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 November 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 15-30 is/are allowed.
- 6) ☒ Claim(s) 1, 4, 5, 7, 8, 10, 12 and 13 is/are rejected.
- 7) ☒ Claim(s) 2, 3, 6, 9, 11 and 14 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Abstract

The abstract of the disclosure is objected to because legal phraseology such as "means" and phrases which can be implied, such as "is disclosed" should not be present therein. Correction is required. See MPEP § 608.01(b).

Specification

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: The limitation "gas" (claim 7) does not have antecedent basis in the specification. It is noted that the term "air" is supported by the specification, but the broader term "gas" is not.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 4 and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by Chickering et al. (hereinafter Chickering). In regard to claims 1 and 7, Chickering discloses a first elongated tubular housing 31 (see Figure 3) with a

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sealed end and an open end, a first fluid 14 in the first housing, a second tubular housing 38 with a sealed end and an open end inserted with the sealed end inside of the open end of the first housing and thereby sealing the first fluid within the first housing, a second fluid (air) in the second housing and opening means 39 located near the sealed end of the second housing and positioned within the first housing to allow the first fluid to commingle with the second fluid wherein after the opening means is open, the two fluids will commingle and may be ejected by squeezing the first tubular housing. In regard to claim 4, an applicator tip 9c is affixed to the open end of the second tubular housing.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 4, 5, 8, 10, 12 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schwartzman in view of Roehrich. In regard to claim 1, Schwartzman discloses a first elongated tubular housing 12 with a sealed end and an open end, a first fluid B in the first housing, a second tubular housing 14 with a sealed end 60 and an open end inserted with the sealed end inside of the open end of the first housing and thereby sealing the first fluid within the first housing, a second fluid A in the second housing and opening means 62 located

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near the sealed end of the second housing and positioned within the first housing to allow the first fluid to commingle with the second fluid wherein after the opening means is open, the two fluids will commingle. Although the Schwartzman reference does not disclose that the first housing 12 may be squeezed to expel the fluids, attention is directed to the Roehrich reference, which discloses another applicator having a valved head wherein the container may be squeezed in order to accelerate the dispensing (see column 3, lines 16). Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to employ such a resilient material when manufacturing the housing 12 of Schwartzman in order to enable a user to accelerate the dispensing. In regard to claim 4, an applicator tip 20 is affixed to the open end of the second tubular housing. In regard to claim 5, the open end of the second housing is sealed (via valve 33) and provided with a second opening means 36 to allow complete sealing of the second fluid in the second housing. In regard to claim 8, one of the fluids may be replaced by a power (column 3, lines 3-7). In regard to claim 10, Schwartzman discloses a tubular housing 12, with a sealed end and an open end, a restriction 42 between the sealed and open ends which separates the housing into two sections, a first fluid B in the first section near the sealed end of the housing, a second fluid A in the second section near the open end of the housing, a first opening means 60, 62 disposed at the restriction which seals the first fluid in the housing and a second opening means 33 at the open end of the housing which seals the second fluid in the second section. Although the Schwartzman reference does not disclosed

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that the housing can be squeezed to expel the fluids, as discussed supra, the housing can obviously be made from such a resilient material which would enable a user to accelerate the dispensing. In regard to claim 12, an applicator tip 20 is affixed near the open end of the housing. In regard to claim 13, as discussed supra, a power may replace one of the fluids.

Allowable Subject Matter

Claims 2, 3, 6, 9, 11 and 14 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 15-30 are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David J. Walczak whose telephone number is 703-308-0608. The examiner can normally be reached on Mon-Thurs, 6:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Greg L. Huson can be reached on 703-308-2580. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



David J. Walczak
Primary Examiner
Art Unit 3751

DJW
8/20/04